

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VIIV HEALTHCARE UK LTD, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 11-576-RGA
	:	Consolidated
LUPIN LTD., et al.,	:	
	:	
Defendants.	:	

MEMORANDUM ORDER

The issue is whether Plaintiffs will be allowed to introduce deposition excerpts of Dr. Hausman. (D.I. 180, 181). The Court accepts the conclusion that this Court has previously reached, that is, that such testimony under circumstances similar to those in this case is admissible. *See Teva Pharmaceuticals USA, Inc. v. Abbott Laboratories*, 2008 WL 4809116 (D.Del. Nov. 5, 2008); *Vandenbraak v. Alfieri*, 2005 WL 1242158 (D.Del. May 25, 2005). The Court further accepts that the admissibility of any testimony is subject to balancing under Rule 403. As did Judge Robinson in *Teva*, I cannot say how the Rule 403 balancing would turn out. I note that Plaintiffs proffer “for example” five points for which Dr. Hausman’s testimony might be used, but I would be pretty surprised if the first two points were in dispute. The 3 million prescriptions of the third point also seems unlikely to be in dispute, though whether this is a “large” number might be. The last two points, I assume, must be in dispute.

Thus, I request that Plaintiffs designate what they want to introduce, and Defendants counter-designate what they would need if the testimony is admitted, and that the Plaintiffs provide me with a highlighted transcript that makes clear which side is designating what. I also request that both sides simultaneously submit letters no later than Thursday, June 20, at noon,

addressing any appropriate Rule 403 considerations, and, in particular, whether Dr. Hausman's testimony varies significantly from that of Mr. McSorley.¹

6-18-13
Date

Richard G. Anderson
United States District Judge

¹ If I find that Plaintiffs' position is not well-taken, I will deduct time from their current allotment. If I find that Defendants counter-designate to excess, I will deduct time from their current allotment.